

been participants in the program or activity had the discrimination not occurred, or (iii) with respect to handicapped persons presently in the program or activity, but not receiving full benefits or equal and integrated treatment within the program.

(b) *Voluntary action.* A recipient may take steps, in addition to any action that is required by this part, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified handicapped persons.

(c) *Self-evaluation.* (1) A recipient shall, within one year of the effective date of this part:

(i) Evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices and the effects thereof that do not or may not meet the requirements of this part.

(ii) Modify, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, any policies and practices that do not meet the requirements of this part; and

(iii) Take, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

(2) A recipient shall, for at least three years following completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public inspection, and provide to the Secretary upon request: (i) A list of the interested persons consulted, (ii) a description of areas examined and any problems identified, and (iii) a description of any modifications made and of any remedial steps taken.

[47 FR 25470, June 11, 1982, as amended at 68 FR 51342, Aug. 26, 2003]

§ 15b.9 Effect of State or local law or other requirements, and effect of employment opportunities.

(a) The obligation to comply with this part is not obviated or alleviated by the existence of any State or local

law or other requirement that, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services or to practice any occupation or profession.

(b) The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for handicapped persons than for nonhandicapped persons.

§ 15b.10 Effect of compliance with regulations of other Federal agencies.

A recipient that has designated a responsible official and established a grievance procedure, provided notice, completed a self-evaluation, or prepared a transition plan in the course of complying with regulations issued by other Federal agencies under section 504 will be in compliance with § 15b.6, § 15b.7, § 15b.8(c), or § 15b.18(f), respectively, if all requirements of those sections have been met in regard to programs or activities assisted by this Department.

[47 FR 25470, June 11, 1982, as amended at 68 FR 51342, Aug. 26, 2003]

Subpart B—Employment Practices

§ 15b.11 Applicability.

This subpart applies to all programs or activities that receive Federal financial assistance provided by the Department of Agriculture after the effective date of this part.

[47 FR 25470, June 11, 1982, as amended at 55 FR 52139, Dec. 19, 1990; 68 FR 51342, Aug. 26, 2003]

§ 15b.12 Discrimination prohibited.

(a) *General.* (1) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity receiving assistance from this Department.

(2) A recipient shall make all decisions concerning employment in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any

way that adversely affects their opportunities or status because of handicap.

(3) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. This includes relationships with employment and referral agencies, with labor unions with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeships.

(4) All provisions of this subpart pertaining to employment, apply equally to volunteer service.

(b) *Specific activities.* The provisions of this subpart apply to:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right to return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including those that are social or recreational; and

(9) Any other term, condition, or privilege of employment.

(c) A recipient's obligation to comply with this subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

[47 FR 25470, June 11, 1982, as amended at 68 FR 51343, Aug. 26, 2003]

§ 15b.13 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program or activity.

(b) Reasonable accommodation may include (1) Making facilities used by employees readily accessible to and useable by handicapped persons, and (2) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provisions of readers or interpreters, and other similar actions.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's programs or activities, factors to be considered include:

(1) The overall size of the recipient's program or activity with respect to number of employees, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of recipient's workforce;

(3) The nature and cost of the accommodation needed.

(d) A recipient may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

[47 FR 25470, June 11, 1982, as amended at 68 FR 51343, Aug. 26, 2003]

§ 15b.14 Employment criteria.

(a) A recipient may not make use of any employment test or other selection criterion that screens out or tends to screen out handicapped persons or any class of handicapped persons unless: (1) The recipient shows that the test score or other selection criterion, as used by the recipient, is job-related for the position in question, and (2) the Secretary cannot show that alternative job-related tests or criteria are available that do not screen out or tend to screen out as many handicapped persons.